

STATE OF COLORADO



Engineering Contracts

David Wells Staff Authority Contracting Officer
4201 East Arkansas Avenue Suite 200
Denver, Colorado 80222

Interested Consultants,

This package is for your use in preparing your Statement of Interest (SOI)/Work Plan (WP) for the professional services selection process for the Colorado Department of Transportation (CDOT). The consultant is encouraged to follow the outline and page distribution indicated in these instructions. The selection panel members will have limited time to review the submittals. If the panel has difficulty finding the desired information, they may consider the submittal as non-responsive and a lower score may result. Consultants must be pre-qualified one week prior to the SOI/WP submittal deadline.

Pages in excess of the page limits for each section will be removed from the submittal.

CDOT'S SELECTION PROCESS IS SUMMARIZED AS FOLLOWS:

SOI/WP Pre-score Activity

The CDOT Contracting Officer reviews the SOI/WP for completeness and compliance with the newspaper advertisement and these instructions. If acceptable, the Contracting Officer transmits the SOI/WP package to each panel member. The package includes:

- SOI/WP Scoring Guidelines
- Draft Scope of Work
- Notice to Consultants
- Acceptance Checklist
- SOI/WP for Each Consultant

In addition to the package, CDOT's Contracting Officer E-mails every panel member their copy of the Excel Scoring Spreadsheet for this SOI/WP.

SOI/WP Scoring Activity

Prior to the selection panel meeting the following occurs:

- Every panel member scores every SOI/WP independently.
- The Civil Rights & Business Resource Center scores the Affidavit of Small Business Participation in the SOI/WP for small business participation. (10%)
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Selection or Short-list Panel Meeting (90%)

A selection panel meeting is held to compile scores and discuss the panel member's evaluations of the consultant's SOI/WP based on the following criteria:

- | | |
|--|-----|
| <input type="checkbox"/> Project Team (includes capacity) | 15% |
| <input type="checkbox"/> Firm Capability | 15% |
| <input type="checkbox"/> Past Performance on Similar Projects or Similar Teams | 15% |
| <input type="checkbox"/> Project Goals | 10% |
| <input type="checkbox"/> Project Control | 10% |
| <input type="checkbox"/> Project Concept | 15% |
| <input type="checkbox"/> Project Critical Issues | 10% |

The selection panel reaches a consensus ranking of either the selected firm, if there is not going to be an optional presentation and interview phase, or the short list of firms (minimum of the top 3 qualified consultants), if there is going to be a presentation and interview phase. The panel provides its recommendation to the Agreements Officer, who obtains the concurrence of the Contract Administrator, and then provides selection documentation to the Chief Engineer for approval. The Chief Engineer's approval is necessary before the Agreements Office can proceed with selection notification or the interview phase.

Presentation and Interview Selection Panel Meeting

The short listed firms have two weeks to prepare their presentation for their interview with the selection panel. The purpose this meeting is to allow consultants time to present their analysis of the project and to allow the panel time to clarify the consultant's qualifications in a question and answer session.

In selections including an Interview Phase, the interview scores count for 20% of the overall score. Other scoring factors from the pre-shortlist evaluation and the shortlist meeting are adjusted accordingly.

Final Selection

In making the final selection recommendation to the Chief Engineer, the panel reaches consensus on the ranking of the selected firm. The panel provides its recommendation to the Contracting Officer, who obtains the concurrence of CDOT's Contract Administrator. Then the Contracting Officer provides selection documentation, including the board's ranking, to the Chief Engineer for approval. The Chief Engineer's approval is necessary before proceeding with selection notification.

SOI/WP Documentation

In addition to these instructions, the following documents are needed to prepare an SOI/WP and can be found on the CDOT consultant management web-site: <https://www.codot.gov/business/consultants/advertised-projects/2017>

- SOI/WP Notice to Consultants Cover Memo
- Notice to Consultants
- Invitation for Consultant Services (Advertisement)
- Draft Scope of Work
 - This scope of work is subject to review by CDOT and may change.*
 - Consultants should be aware that the final scope of work may involve input from the selected consultant.*
- SOI/WP Preparation Instructions for consultants

Additional Requirements

- All firms submitting a SOI/WP must be pre-qualified at least seven calendar days prior to the SOI/WP submittal date. Pre-qualification must be done annually.
- Professional liability insurance and other insurance are required for the length of the contract from selected consultant. Proof of insurance must be submitted with the final cost proposal.

Pre-qualification and insurance questions should be directed to the Agreements Office, at 303-757-9583.

Consultant selection process questions should be directed to CDOT Engineering Contracts Branch Contracting Officer David Wells at 303-757-9480

The Agreements Office recommends that you prepare your SOI/WP in a 10 - 12 point font. If a smaller font is used, it may reflect negatively on your scores if panel members can not read your submission. A page for the submittal is defined as a standard 8-1/2 x 11 inch sheet of paper printed on one side only. If you notice any conflicts between the instructions and the guidelines in the public advertisement (notice to consultants), information in the public advertisement takes precedence.

Please do **not** include company prime or sub-consultant firm resumes, or staff resumes at this time.

Sincerely,

David Wells, Staff Authority Contracting Officer
Engineering Contracts Branch

**CDOT Region 3 & Region 5
Non-Project Specific Survey & Right of Way Engineering Services
Notice for Professional Consultants**

CONTRACT REQUIREMENT FOR INTERESTED CONSULTANTS

All consultant firms submitting SOI and Work Plan as “Prime” and / or “Sub-Consultant”, for Advertisements and Solicitations, must have an “*Audited Indirect Cost (overhead) Rate*” that complies with Federal Acquisition Regulations (FAR) and AASHTO Audit Guide and a CDOT Master Pricing Agreement in order to compete and be eligible for contract award.

Interested firms that do not have a current audited indirect cost rate, and bill on a “Fee Schedule” may request a waiver of this policy from the CDOT Chief Engineer, who will consider factors relevant to the audited rate. Waivers are granted at the Chief Engineer’s sole discretion.

Professional Consultant Services

Statement of Interest (SOI)/Work Plan (WP)

Preparation Instructions for Consultants



Colorado Department of Transportation
Engineering Contracts Branch
4201 East Arkansas Avenue Suite 200
Denver, Colorado 80222-3400

Telephone Number: (303) 757-9480

I. CONSULTANT SOI/WP INSTRUCTIONS

In CDOT's continued environmental efforts in "Going Green", Consulting firms are encouraged to submit their SOI on 2 sided format, rather than one sided only.

A. Sections

1. Cover or Introductory Letter (2 page limit - 8 1/2 x 11 paper) unchanged
2. Statement of Interest Section (5 page limit, 8 1/2 x 11 paper)
3. Work Plan Section (4 page limit - 8 1/2 x 11 paper)
4. Miscellaneous Section ~Optional
(5 page limit - 8 1/2 x 11paper, and up to 3 of the 5 pages can be on 11 x 17 paper)
5. The Commendation Section (No page limit - 8 1/2 x 11 paper)
6. UDBE ESB SECTION ~ AFFIDAVIT OF SMALL BUSINESS PARTICIPATION

B. Cover or Introductory Letter

1. Address the cover or introductory letter to the Agreements Contracting Officer:

David Wells Staff Authority Contracting Officer
CDOT Engineering Contracts Branch
4201 E. Arkansas Avenue Suite 200
Denver, Colorado 80222-3400

2. Include the following elements of information in the letter as a minimum and highlight these items in bold letters.
 - a) Project number and project location for project specific contracts.
 - b) Statement that the firm is pre-qualified with CDOT and the firm's pre-qualification expiration date.
 - c) Certification that the information and data submitted is true and complete to the best knowledge of the individual signing the letter.
 - d) Name, telephone number, e-mail address and fax number of the individual to contact regarding their SOI/WP submittal.
 - e) CDOT **requires** an original signature, by an authorized principal, partner, or officer of the firm.

C. Statement of Interest Section (SOI)

1. The following outline is to aid you in preparing your SOI. Your responses to the elements of this outline should demonstrate the knowledge and expertise your firm brings to the project.
 - a) Project Team
 - (1) Identify your:
 - a. Project Principal
 - b. Project Manager
 - c. Key Staff
 - d. Sub-consultants.
 - (2) Present a brief discussion regarding how the team's qualifications and experience relate to this project.

- (3) Include the following:
 - a. Principal's level of involvement in the project
 - b. Qualifications and relevant individual experience of prime and sub-consultant team members
 - c. Unique knowledge of team members related to the project
 - d. Commitment of time and availability of key staff members
 - e. Length of time with the firm for each key team member
 - f. Experience on similar projects as a team
- (4) A project team organization chart maybe included in the optional section and, if it's included there, it is counted as a page of optional section.

b) Firm Capability

- (1) Address the firm's size and the disciplines of technical staff.
- (2) Include the firm's relevant experience and accomplishments as a Prime Consultant that were are not listed in the project team section.
- (3) Outline computer software availability and its compatibility with CDOT software.
 - a. All consultants are **required** to use the following Bentley Suite software packages, which are currently used by CDOT:
 - (i) INROADS for project design
 - (ii) Microstation for project drafting
- (4) Indicate the Consultant's availability to do the project concurrent with existing and projected work loads.
- (5) Consider including the following:
 - a. Graphs depicting firms capacity to do the project
 - b. Information on the sub-consultant's role
 - c. The sub-consultants function and integration into the team
 - d. Match of personnel to the existing and future work load

c) Past Performance on Similar Projects or Similar Teams

- (1) List current and past projects completed within the past three years with CDOT
- (2) List similar projects which are on-going or completed within the past three years for other agencies.
- (3) Demonstrate your firm's or team's ability to do the following for projects listed above:
 - a. Control costs
 - b. Meet schedules
 - c. Provide quality work.
- (4) Include the project name, project manager's name and telephone number for all projects listed above.
- (5) Describe your firm's role for all the projects listed above.
- (6) Please include any letters of commendation you received on the projects listed above in the commendation section, where they will not count against your page limits.

D. WORK PLAN SECTION

1. Project Goal

a) Indicate the following:

- (1) Your firm's understanding of the project goals.
- (2) A list of deliverables required on the project.
- (3) For non-project specific selections, which have no identified tasks, describe a hypothetical project or the approach you have taken on a similar project.

2. Project Control

a) List the names of staff members responsible for the following items and describe how they plan to manage them.

(1) Cost Control

- a. Controlling consultant contract costs.
- b. Controlling construction costs to stay within the budget.

(2) Quality Control

- a. Insuring that CDOT procedures are followed.
- b. Insuring that project plans, specifications and estimates are free of errors and meet CDOT and other agency standards.

(3) Scheduling

- a. Managing the required work to meet the established schedule.
- b. For your information, a detailed work hour schedule should **not** be included.

3. Project Concept

a) Briefly describe the actions you plan to take to achieve the project goals and objectives.

(1) Consider the following items:

- a. Have you formulated a successful approach to the project?
- b. Are possible design alternates suggested?
- c. Have you exhibited sensitivity to general public concerns?
- d. Have you demonstrated a clear and concise understanding of the project based on the data which has been provided?

4. Critical Issues (Problems and Solutions)

a) This is your opportunity to present an analysis of the most significant issues that you believe you will have to address in order to successfully complete this contract.

- (1) Consider the following points in presenting your analysis:
- (2) Are major problems identified?
- (3) Are the problems significant?
- (4) Are solutions reasonable?

E. MISCELLANEOUS SECTION (Optional)

1. This section provides the Consultant with the opportunity to submit additional Information:

- (a) Graphs
- (b) Charts
- (c) Photographs

2. Up to 3 of the 5 pages can be 11 x 17 inches, but they must be folded to 8.5 x 11 inches.

F. COMMENDATION SECTION

1. Letters of commendation or awards for similar previous work completed within the last three years. These letters should be of reasonable length and pertinent to the project.
(No page limit - 8 1/2 x 11 paper)

G. UDBE / ESB SECTION

1, Affidavit of Small Business Participation: For more information see the “Disadvantaged Business Enterprise (DBE) & Emerging Small Business (ESB) Requirements” provided below. Letters of intent and/or proof of certification are not required to be submitted with your SOI/WP.

3. CONSULTANT SELECTION PROTEST RULES

a. Protests will be handled as follows:

- i.** Any actual or prospective consultant who is aggrieved in connection with a solicitation or award of a contract may protest to the Chief Engineer. The protest shall be submitted in writing within seven working days after the aggrieved person knows or should have known of the facts giving rise to the protest.
- ii.** The Chief Engineer or designee shall have the authority to settle and resolve a protest of a consultant, actual or prospective, concerning the solicitation or award of a contract. A written decision regarding the protest shall be rendered within seven working days after the protest is filed. The decision shall be based on and limited to a review of only those issues raised by the aggrieved consultant, and will set forth each factor taken into account, in reaching the decision. The decision will constitute the final agency action of the Colorado Department of Transportation regarding the protest.
- iii.** Entitlement to costs: When a protest is sustained by the Chief Engineer or designee, or upon administrative or judicial review, and the consultant should have been awarded the contract under the solicitation, but was not. The protestor will be entitled to reasonable costs incurred in connection with the solicitation, including SOIWP preparation costs. No other costs or fees will be permitted or awarded, and reasonable costs and fees will not include attorney's fees.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) & EMERGING SMALL BUSINESS (ESB) REQUIREMENTS

I. OVERVIEW

The Disadvantaged Business Enterprise (DBE) Program is a federally-mandated program that seeks to ensure non-discrimination in the award and administration of U.S. Department of Transportation (DOT)-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts. To such end, the Colorado Department of Transportation (CDOT) may set a contract goal for DBE participation on any DOT-assisted contract, which can be found in the Invitation for Consultant Services.

The Emerging Small Business (ESB) Program is a CDOT-specific program that aims to help small businesses acquire the knowledge, experience, and resources needed to participate on CDOT construction, professional service, and research contracts. CDOT may set an ESB contract goal, which can be found in the Invitation for Consultant Services.

Each Consultant must submit an Affidavit of Small Business Participation within its statement of interest stating that it will make good faith efforts to meet the contract goal on the total value of the contract and on each task order (if applicable). The Consultant may make additional promises of ESB/DBE participation in the Affidavit of Small Business Participation for incentive points. These promises are called a “Small Business Target” and are enforced like a contract goal once promised.

Prior to contract award, the Consultant is required to submit a DBE/ESB utilization plan using B2G software. The Consultant is also required to provide a detailed participation plan with each task order (if any) by completing an Anticipated Participation Plan for Task Orders. A contract and/or task order will not be awarded until the Consultant demonstrates good faith efforts to meet the contract goal and Small Business Targets. CDOT will monitor the progress of the participation plan throughout contract performance to ensure that the consultant’s commitments are fulfilled. Modifications to the utilization plan and/or Anticipated Participation Plan for Task Orders must be approved by CDOT. CDOT may withhold payment or seek other contractual remedies if a consultant is in violation of the requirements of this contract.

For general assistance regarding the DBE and ESB programs, contact CDOT’s Civil Rights and Business Resource Center (CRBRC) at (303)757-9234. For questions regarding compliance during a project, contact the applicable regional civil rights office.

II. DEFINITIONS

- a. *Disadvantaged Business Enterprise (DBE)*. A Colorado-certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.
- b. *Emerging Small Business (ESB)*. A CDOT-certified Emerging Small Business firm listed on the ESB Directory at www.coloradoesb.org.
- c. *DBE Contract Goal*. The percentage of the contract established by CDOT for participation by DBEs. If a DBE contract goal is set, it is stated in the Invitation for Consultant Services.

- d. *Commitment.* A portion of the contract, identified by dollar amount and work area, designated by the Consultant for participation by a particular DBE and/or ESB firm. Commitments are submitted to CDOT through a utilization plan in B2G Software on fund-encumbered contracts. Commitments are submitted to CDOT through the Anticipated Participation Plan for Task Orders on as-needed contracts. Once approved, commitments are binding obligations of the contract.
- e. *Commercially Useful Function.* Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR 26. 55(c).
- f. *ESB Contract Goal.* The percentage of the contract established by CDOT for participation by ESBs. If an ESB contract goal is set, it is stated in the Invitation for Consultant Services.
- g. *Good Faith Efforts.* All necessary and reasonable steps to achieve a contract goal which by their scope, intensity, and appropriateness to the objective could reasonably be expected to obtain sufficient participation. Guidance on good faith efforts is provided in 49 CFR Part 26, Appendix A.
- h. *Reduction.* Reduction occurs when the consultant reduces a commitment to a DBE and/or ESB. A reduction constitutes a partial termination.
- i. *Small Business Targets.* Percentages of the contract and/or commitments to utilize ESBs and/or DBEs for which the Consultant received incentive points during the selection process. Small Business Targets are binding obligations of the Contract subject to enforcement actions, including withholding of payments and /or future task order approvals, if not fulfilled.
- j. *Subconsultant.* An individual, firm, corporation or other legal entity to whom the consultant sublets part of the contract. For purposes of these requirements, the term subconsultant includes vendors.
- k. *Substitution.* Substitution occurs when a consultant seeks to find another certified firm to perform work on the contract as a result of a reduction or termination.
- l. *Termination.* Termination occurs when a consultant no longer intends to use a DBE and/or ESB for fulfillment of a commitment. This includes, but is not limited to, instances in which a consultant seeks to perform work originally designated for a DBE and/or ESB subconsultant with its own forces or those of an affiliate, a non-DBE and/or ESB firm, or with another DBE and/or ESB firm.
- m. *Work Code.* A code to identify the work that a DBE is certified to perform. A work code includes a six digit North American Industry Classifications System code plus a descriptor. Work codes are listed on a firm's profile on the UCP DBE Directory. The consultant may contact CRBRC to receive guidance on whether a work code covers the work to be performed.

III. NON-DISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

- a. *CDOT Assurance.* The Colorado Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- b. *Consultant Assurance.* By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as CDOT deems appropriate, which may include, but is not limited to: withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the consultant from future bidding as non-responsible.

- c. *Prompt Payment.* Payments to all Subconsultants shall be made within seven (7) days of receipt of payment from CDOT or no later than ninety (90) days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify CDOT no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include failure to timely submit an invoice to CDOT or to deposit payments made.
- d. *Subcontract Terms.* The assurance provided in subsection (b) and the prompt payment terms outlined in subsection (c) of this section shall be included in all subcontracts or other agreements for the performance of work on the project.

IV. PROCEDURES

a. *Statement of Interest:*

- i. *Affidavit of Small Business Participation.* The Affidavit of Small Business Participation must be submitted with the Consultant's statement of interest. The Affidavit of Small Business Participation shall outline the Consultant's approach to meeting the contract goal and affirm, under oath, that the Consultant will make Good Faith Efforts to meet the contract goal on the overall contract and on each task order (if any). The Affidavit of Small Business Participation also provides space for the Consultant to identify the Small Business Targets for which it is seeking points.
- ii. *Incentives and Scoring.* CDOT shall award incentive points for Small Business Targets established by the Consultant in the Affidavit of Small Business Participation. Consultants without DBE or ESB certification may receive a maximum of 7 points. Consultants with DBE and/or ESB certification may receive a maximum of 10 points. Points will be awarded as follows:
 - a. Consultants with ESB certification receive 10 points.
 - b. Consultants with DBE certification receive 6 points.
 - c. Consultants may receive 0.5 points for each percentage of ESB participation committed.
 - d. Consultants may receive 1 point for the use of a new ESB or DBE Subconsultant. A new ESB/DBE Subconsultant is an ESB/DBE firm that the prime has not teamed with in the past 3 years. Teaming relationships will be tracked starting on August 1, 2016, thus, all relationships can be considered a new relationship starting on this date. To receive credit, the Subconsultant must be performing at least \$50,000 or 2% of the work, whichever is less.
 - e. Consultants may receive 1 point for the use of a certified Level 1 ESB Subconsultant. To receive credit, the Subconsultant must be performing at least \$50,000 or 2% of the work, whichever is less.

b. *Award:*

Prior to contract award, the selected Consultant must complete and submit a utilization plan using B2G Software.

- i. *Fund-Encumbered Contracts.* If the contract is fund-encumbered, the Consultant must submit a detailed utilization plan. The detailed utilization plan must include the Subconsultant(s) the Consultant will use, the work area(s) the Subconsultant(s) will be performing, and the value of the work that the Subconsultant(s) will perform.
- ii. *As-Needed, Task Order-Based Contracts.* If the contract is an as-needed, task order-based contract, the Consultant must document all team members included in the Consultant's statement of interest by submitting a utilization plan in B2G software. The team members must match the participation promised in the Affidavit of Small Business Participation. The Consultant may document 0% participation for each team member in the utilization plan.

i. *Task Order Proposal.*

1. *Small Business Participation Plan.* With each task order proposal, the Consultant shall document all DBE and/or ESB Subconsultants that will be used to complete the Contract work via an Anticipated Participation Plan for Task Orders. If the Consultant has not obtained any Commitments, the Consultant shall state so. If the Consultant is a certified firm, it shall include itself on the Anticipated Participation Plan for Task Orders.
2. *Letter of Intent from Vendors:* The Project Cost Worksheet shall constitute confirmation of the commitment by the DBE or ESB Subconsultant. The Consultant must submit a Letter of Intent confirming the commitment for any vendor Subconsultant for which a Project Cost Worksheet is not provided.

c. *Good Faith Efforts:*

If the Consultant does not obtain sufficient participation to meet the DBE Contract Goal, ESB Contract Goal, and/or Small Business Targets on the overall contract and/or task order (if any), the consultant shall provide an explanation of its Good Faith Efforts to obtain participation by submitting a Good Faith Efforts Report and supporting documentation. If the Good Faith Efforts Report is submitted with a task order proposal, the Consultant may include an explanation of proposed participation on future task orders.

- i. *Withholding of a Contract and/or Task Order:* If the applicable civil rights office determines the consultant has not made Good Faith Efforts, the contract and/or task order proposal will not be approved. The applicable regional civil rights office may also withhold approval and/or request additional information if the Consultant has not met its Small Business Targets. The determination of the regional civil rights office may be appealed to the Regional Transportation Director. The determination of the Civil Rights and Business Resource Center shall be appealable to the Chief Engineer.

V. ELIGIBLE PARTICIPATION

The following rules will be used to determine whether work performed by a Subconsultant qualifies as eligible participation to count toward the DBE Contract Goal, ESB Contract Goal and/or the Small Business Targets:

- a. *Approved Commitment for Work to be Performed.* The work performed by the DBE and/or ESB Subconsultant must be identified in an approved Commitment.
- b. *Certified Upon Submission of Commitment and Prior to Starting Work.* The Subconsultant must be certified upon submission of the Commitment and prior to starting work. For DBE firms this includes being certified in the work to be performed. CDOT will evaluate whether the work to be performed can reasonably be construed to fall under the Work Codes in which the DBE is certified. If a Subconsultant is decertified after the issuance of a contract and/or task order, the participation on such contract and/or task order by that DBE or ESB will continue to count.
- c. *Commercially Useful Function.* Only work performed by a DBE and/or ESB that performs a Commercially Useful Function in the work of the Contract will count.
- e. *Subcontracted Work.* When a DBE and/or ESB subcontracts part of the work of its contract to another firm, the value of the subcontracted work may only be counted if the subcontractor is also a certified firm. Work that a DBE and/or ESB subcontracts to a non-certified firm does not count. DBE and ESB firms may use an employee leasing company. Such participation will count if the certified firm maintains an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.
- f. *Reasonable Fees.* The Consultant may count fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the

fee or commission is determined by CDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- g. *DBE and ESB Staffing Agencies.* Unless certified in the work to be performed, DBE staffing agencies only count toward the contract goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay.
- h. *Joint Ventures.* When a DBE and/or ESB performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE and/or ESB performs with its own forces may count toward the contract goal. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2G software and be reviewed by CDOT.
- i. *Received Payment for Work.* For purposes of determining whether the Consultant has met the contract goal and/or Small Business Targets at the end of the Contract, eligible participation shall be calculated based upon the total amount paid to DBEs and/or ESBs under the Contract.

VI. REPORTING & MODIFICATIONS

- a. *Prompt Pay Report.* The Consultant shall electronically submit prompt payment reports to CDOT through the B2G software each month. If no payment has been made, the Consultant shall document this in the prompt payment audit report.
- b. *Termination or Reduction.* Termination or Reduction of Commitments shall only be permitted at the discretion of CDOT based upon a demonstration of good cause by the Consultant. Consultants may request modification approval by submitting revised Small Business Participation Plan to CDOT. The Consultant may not Terminate or Reduce a Commitment without CDOT approval.
 - i. *Notice of Termination or Reduction to Subconsultant.* The Consultant must give notice in writing to a DBE and/or ESB Subconsultant of the Consultant's intent to Terminate or Reduce the Subconsultant's work before requesting approval for the modification, with a copy to CDOT. Unless otherwise waived in writing by the DBE or ESB, the Consultant must give the DBE/ESB five (5) days to respond to the Consultant's notice and advise CDOT of the reasons, if any, that it objects to the proposed Termination or Reduction and why the Consultant's action should not be approved. . If required in a particular case as a matter of public necessity (e.g., safety), CDOT may waive or reduce the period to respond. The DBE/ESB firm may also voluntarily waive the response period. Examples of good cause justifications can be found in 49 CFR Part 26.53(f)(3).
 - ii. *Substitution.* When a Commitment is Terminated or a small business fails to complete its work on the Contract for any reason, the Consultant shall make Good Faith Efforts to find another firm to perform at least the same amount of work under the Contract as the Subconsultant that was Terminated.
 - iii. *Termination, Reduction and Substitutions Requests.* Following the five (5) day response period for termination or reductions, the Consultant shall request the termination or reduction from CDOT by submitting a revised Small Business Participation Plan for approval. f the Consultant is unable to find commensurate substitution, the Consultant shall provide documentation of the Consultant's Good Faith Efforts to CDOT within the reques. If CDOT requests additional documentation, the Consultant shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary at the request of the Consultant. CDOT shall provide a written determination to the Consultant stating whether or not Good Faith Efforts have been demonstrated.

VII. ENFORCEMENT

- a. *Investigation.* CDOT may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBE Subconsultants and applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the contract goal are

required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.

- b. *Falsification and Misrepresentation.* If CDOT determines that a Consultant or Subconsultant was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE and/or ESB participation or any other business arrangement determined by CDOT to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, CDOT may:
 - i. Refuse to count any fraudulent or misrepresented DBE/ESB participation;
 - ii. Withhold progress payments to the Consultant commensurate with the violation;
 - iii. Reduce the Consultant's prequalification status;
 - iv. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
 - v. Seek any other available contractual remedy.
- c. *Failure to Obtain Consent for DBE/ESB Termination or Reduction or to Make Good Faith Efforts.* In accordance with 49 CFR Part 26.53(f)(1)(i), a Consultant shall not be entitled to payment for any work or material performed by an unapproved Subconsultant as a result of an unapproved Termination or Reduction of a certified Subconsultant. Additionally, the Consultant shall not receive payment for any portion of the Contract in which the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal. The Consultant will not be subject to duplicate reduction for the same offense. CDOT may adjust the payment reduction wherein the Consultant demonstrates Good Faith Efforts.
- d. *Failure to Comply with Requirements.* CDOT may withhold approval of task orders and/or payment to the Consultant for failure to comply with these requirements.

**COLORADO DEPARTMENT OF TRANSPORTATION
GOOD FAITH EFFORTS REPORT**

Project Name:

Instructions: Complete this form only if the DBE goal or ESB goal has not been met.

Section 1. Consultant Information.

Consultant:	Contact Name:	Consultant is an ESB: <input type="checkbox"/>
		Consultant is a DBE: <input type="checkbox"/>
Contact E-Mail:	Contact Phone #:	

Section 2. Efforts to Achieve DBE/ESB Participation.

- a. Describe your good faith efforts to meet the contract goal and describe why the goal could not be reached.
- b. If you are making a Good Faith Efforts Report for a task order, please include participation achieved on the overall contract and any planned participation for future task orders to meet the contract goal.

Section 3. Affidavit of Good Faith Efforts.

By signing below, the consultant hereby affirms that it has made good faith efforts and has documented all such efforts in this form and the attached supporting documentation.

I, _____, am the _____ of _____.
(Representative Name) (Title) (Company)

(Signature)

(Date)